

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code chapter 17A, and sections 421.14, 422.68, and 423A.6, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 17, “Exempt Sales”; Chapter 18, “Taxable and Exempt Sales Determined by Method of Transaction or Usage”; Chapter 103, “State-Imposed and Locally Imposed Hotel and Motel Taxes—Administration”; Chapter 105, “Locally Imposed Hotel and Motel Tax”; Chapter 235, “Rebate of Iowa Sales Tax Paid”; and Chapter 241, “Excise Taxes Not Governed by the Streamlined Sales and Use Tax Agreement,” Iowa Administrative Code.

Item 1 amends rule 701—17.1(422,423) to reflect the fact that sales by an organization which provides athletic activities to youth are now exempt from tax.

Items 2, 5, 7, and 10 amend implementation sentences.

Item 3 rescinds and reserves rule 701—18.40(422,423) because of a change to the law relating to the rental of nonsleeping rooms.

Item 4 amends subrule 103.1(1) to explain that taxable “lodging” does not include rental of rooms for other than sleeping or resting.

Item 6 amends subrule 105.3(1) to indicate that exemptions from sales and use tax no longer apply to the hotel and motel tax and that, beginning July 1, 2009, the sales price of the renting of sleeping rooms is subject to both the state-imposed hotel and motel tax and the locally imposed hotel and motel tax.

Item 8 amends subrule 235.1(1) to state that certain existing definitions set out in the subrule are changed as of July 1, 2009, and to add a paragraph to set out the new definitions which are applicable on and after July 1, 2009.

Item 9 amends subrules 235.1(4) and 235.1(5) to reflect the fact that a new definition of “change of control” is applicable to the auto racetrack facility rebate program.

Item 11 amends rule 701—241.3(423A), definition of “lodging,” to reflect the fact that taxable “lodging” does not include rental of rooms for other than sleeping or resting.

Item 12 amends rule 701—241.4(423A) to state that the rental of a mobile home or manufactured housing which is tangible personal property is treated as the rental of lodging rather than the rental of tangible personal property.

Item 13 amends rule 701—241.5(423A) to explain the circumstances under which a renter can and cannot claim the exemption from hotel and motel tax which results from 31 days’ consecutive stay at the same location.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 21, 2009, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules

Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 8, 2009. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 8, 2009.

These amendments are intended to implement 2009 Iowa Acts, Senate File 322, section 7, and 2009 Iowa Acts, Senate File 478, sections 137, 138, 139, 211, 212, 218, and 220.

The following amendments are proposed.

ITEM 1. Adopt the following new subrule 17.1(7):

**17.1(7)** Effective May 22, 2009, and retroactive to July 1, 1998, an organization which otherwise meets the requirements of this rule and is created for the sole or primary purpose of providing athletic activities to youth is created for an educational purpose. Sales made by a qualified organization are exempt from the collection of sales tax. An organization is providing athletic activities to youth if the persons for which it provides those activities are age 18 or under. The organization must be solely organized or its primary purpose must be related to providing athletic activities for youth. An “activity” is any exertion or experience which involves some movement of the human body and gives enjoyment or recreation. An “athletic activity” is any activity which requires physical strength, skill, speed, or training in its performance. The following activities are nonexclusive examples of athletic activity: baseball, football, basketball, bowling, softball, volleyball, soccer, golf, tennis, racquetball, swimming, wrestling, and track and field.

Purchases made by a youth sports organization for its own use are not exempt from the sales or use tax.

ITEM 2. Amend rule **701—17.1(422,423)**, implementation sentence, as follows:

This rule is intended to implement ~~2001 Iowa Acts, House File 736, section 2, and Iowa Code sections 422.45(5), 422.45(8), and 423.1, and subsection 423.3(78) as amended by 2009 Iowa Acts, Senate File 478.~~

ITEM 3. Rescind and reserve rule **701—18.40(422,423)**.

ITEM 4. Amend subrule **103.1(1)**, definition of “Lodging,” as follows:

“Lodging” means rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, or manufactured or mobile home which is tangible personal property, or in a tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals. The word “lodging” does not refer to the rental of rooms for purposes other than sleeping or resting, including but not limited to rental of rooms for meetings, conferences, weddings, or banquets.

ITEM 5. Amend rule **701—103.1(423A)**, implementation sentence, as follows:

This rule is intended to implement ~~2005 Iowa Code Supplement sections 423A.3 and 423A.4 Iowa Code section 423A.2 as amended by 2009 Iowa Acts, Senate File 478, and sections 423A.3, 423A.4, and 423A.6.~~

ITEM 6. Amend subrule 105.3(1) as follows:

**105.3(1)** The tax shall not apply: (a) when lodging is furnished to a person if that person rents any rooms or other lodging for more than 31 consecutive days, (b) to the renting of sleeping rooms in dormitories and in memorial unions at all universities and colleges located in the state, (c) to contracts made directly with the federal government, or (d) to the renting of a room to the guest of a religious institution upon real property exempt from tax as the property of a religious institution, if the reason for renting the room is to provide a place for a religious retreat or function and not a place for transient

guests generally. For the period beginning July 1, 2008, and ending June 30, 2009, the sales price of any transaction exempted from state sales tax by Iowa Code section 423.3 was exempted from hotel and motel tax. Beginning July 1, 2009, the sales price of the renting of sleeping rooms is subject to both the state-imposed hotel and motel tax and the locally imposed hotel and motel tax.

ITEM 7. Amend rule **701—105.3(423A)**, implementation sentence, as follows:

This rule is intended to implement 2005 Iowa Code Supplement section 423A.4 as amended by 2009 Iowa Acts, Senate File 478.

ITEM 8. Amend subrule 235.1(1) as follows:

**235.1(1) Definitions.**

*a.* For the purpose of this program, prior to July 1, 2009, the following definitions apply:

*“Automobile racetrack facility”* means a sanctioned automobile racetrack facility located as part of a racetrack and entertainment complex, including any museum attached to or included in the racetrack facility, but excluding any restaurant, and which facility is located, on a maximum of 232 acres, in a city with a population of at least 14,500 but not more than 16,500 residents, which city is located in a county with a population of at least 35,000, but not more than 40,000 residents, and where the construction on the racetrack facility commenced not later than one year following July 1, 2005, and the cost of the construction upon completion was at least \$35 million.

*“Change of control”* means any of the following:

1. Any change in the ownership of the original or any subsequent legal entity that is the owner or operator of the automobile racetrack facility such that at least 60 percent of the equity interests in the legal entity cease to be owned by individuals who are residents of Iowa, an Iowa corporation, or combination of both.

2. The original owners of the legal entity that is the owner or operator of the automobile racetrack facility shall collectively cease to own more than 50 percent of the voting equity interests of such legal entity or shall otherwise cease to have effective control of such legal entity.

*“Iowa corporation”* means a corporation incorporated under the laws of Iowa where at least 60 percent of the corporation’s equity interests are owned by individuals who are residents of Iowa.

*“Owner or operator”* means a for-profit legal entity where at least 60 percent of its equity interests are owned by individuals who are residents of Iowa, an Iowa corporation, or combination of both and that is the owner or operator of an automobile racetrack facility and is primarily a promoter of motor vehicle races.

*“Population”* means the population based upon the 2000 certified federal census.

*b.* For the purposes of this program, on and after July 1, 2009, the following definitions apply:

*“Automobile racetrack facility”* means a sanctioned automobile racetrack facility located as part of a racetrack and entertainment complex, including any museum attached to or included in the racetrack facility, but excluding any restaurant, and which facility is located, on a maximum of 232 acres, in a city with a population of at least 14,500 but not more than 16,500 residents, which city is located in a county with a population of at least 35,000, but not more than 40,000 residents, and where the construction on the racetrack facility commenced not later than one year following July 1, 2005, and the cost of the construction upon completion was at least \$35 million.

*“Change of control”* means any of the following:

1. Any change in the ownership of the original or any subsequent legal entity that is the owner or operator of the automobile racetrack facility such that less than 25 percent of the equity interests in the legal entity is owned by individuals who are residents of Iowa, an Iowa corporation, or combination of both.

2. The original owners of the legal entity that is the owner or operator of the automobile racetrack facility shall collectively cease to own at least 25 percent of the voting equity interests of such legal entity.

*“Iowa corporation”* means a corporation incorporated under the laws of Iowa where at least 25 percent of the corporation’s equity interests are owned by individuals who are residents of Iowa.

“Owner or operator” means a for-profit legal entity where at least 25 percent of its equity interests are owned by individuals who are residents of Iowa, an Iowa corporation, or combination of both and that is the owner or operator of an automobile racetrack facility and is primarily a promoter of motor vehicle races.

“Population” means the population based upon the 2000 certified federal census.

ITEM 9. Amend subrules 235.1(4) and 235.1(5) as follows:

**235.1(4) Limitations.** The automobile racetrack facility rebate program applies only to transactions which occur on or after January 1, 2006, but before January 1, 2016, and for which sales tax was collected. Only the state sales tax is subject to rebate. The rebate is limited to 5 percent. Local option taxes paid and collected are not subject to rebate. Rebates of sales taxes to an automobile racetrack facility are not authorized for transactions which occur on or after the date of the sale or other transfer, whether voluntary or involuntary, of the automobile racetrack facility to a party other than the original owner of the facility or upon a change of control of such facility.

**235.1(5) Termination of rebate program.** The rebate program for automobile racetrack facilities is a pilot program which terminates on the earliest of the following dates:

- a. June 30, 2016; or
- b. Thirty days following the date on which \$12,500,000 in total rebates have been provided; or
- c. Thirty days following the date of the sale or other transfer, whether voluntary or involuntary, of the automobile racetrack facility to a party other than the original owner of the facility or upon a change of control of such facility.

ITEM 10. Amend rule ~~701—235.1(423)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code Supplement section 423.4(5) and 2005 Iowa Acts, chapter 110 as amended by 2009 Iowa Acts, Senate File 478.

ITEM 11. Amend rule ~~701—241.3(423A)~~, definition of “Lodging” as follows:

“Lodging” means rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, or manufactured or mobile home which is tangible personal property, or in a tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals. The word “lodging” does not refer to the rental of rooms for purposes other than sleeping or resting, including but not limited to rental of rooms for meetings, conferences, weddings, or banquets.

ITEM 12. Amend rule 701—241.4(423A) as follows:

**701—241.4(423A) Imposition of tax.** A tax of 5 percent is imposed upon the sales price for the rental of any lodging if the rental occurs in this state. The tax shall be collected by any lessor of lodging from the user of that lodging. The lessor shall add the tax to the sales price of the lodging, and the state-imposed tax, when collected, shall be stated as a distinct item, separate and apart from the sales price of the lodging and the local tax imposed, if any, under Iowa Code section 423A.4. The rental of a mobile home or manufactured housing which is tangible personal property is treated as the rental of lodging rather than tangible personal property.

ITEM 13. Amend rule 701—241.5(423A) as follows:

**701—241.5(423A) Exemptions.** The tax described in this division shall not apply: (a) when lodging is furnished to a person if that person rents any rooms or facility for more than 31 consecutive days, (b) to the renting of sleeping rooms in dormitories and in memorial unions at all universities and colleges located in the state, (c) to contracts made directly with the federal government, or (d) to the renting of lodging to the guest of a religious institution upon real property exempt from tax as the property of a religious institution, if the reason for renting the room is to provide a place for a religious retreat or function and not a place for transient guests generally.

Concerning the exemption for rental for more than 31 consecutive days, the rooms must be rented by the same person for a period of more than 31 consecutive days. The renter must contract to rent for a

period of 31 days or more. The renter may not accumulate these 31 days by contracting for two or more rental transactions. The incremental manner in which the retailer bills its customers does not influence the accumulation of the days required to claim the exemption.